



(Billing code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750-AI11

Defense Federal Acquisition Regulation Supplement: Domestically Nonavailable Articles—Elimination of DoD-Unique List (DFARS Case 2013-D020)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the DoD-unique list of domestically nonavailable articles because these items have been found to be either available domestically or are not used by DoD.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Lee Renna, telephone 571-372-6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 78 FR 73474 on December 6, 2013, to remove section 225.104 in its

entirety because the articles currently listed no longer qualify as an exception to the Buy American statute (41 U.S.C section 8302(a)), on the basis of their nonavailability. The two items listed at section 225.104 that are being removed have been found to be either (1) available from domestic producers in the case of aluminum clad steel wire, or (2) DoD does not use the item in the case of the sperm-whale oil. Two public comments were submitted in response to the proposed rule.

II. Discussion and Analysis.

No changes are being made to the final rule as a result of the two public comments. The first respondent stated support for the rule and the second respondent noted that there should be no change to the rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section

6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows.

This final rule amends the Defense Acquisition Regulation Supplement (DFARS) by removing the DoD-unique list of domestically nonavailable articles that have been found to be either available domestically or are not used by DoD. Of the two items on the list, aluminum-clad steel is produced and available in the United States, and DoD does not use sperm-whale oil.

This rule will not have an impact on small entities as it merely removes from the DFARS a listing of an item that is now domestically available and an item that is not used by DoD. The removal of the nonavailability exception to the Buy American statute for aluminum-clad steel wire will neither increase nor decrease small businesses' participation in future procurements, particularly with regard to set-asides under the Small Business Program. This conclusion is primarily attributed to the application of the nonmanufacturer rule. Under the nonmanufacturer rule, any small business concern proposing to

furnish a product that it did not itself manufacture must furnish the product of a domestic small business manufacturer. However, in industries where the Small Business Administration (SBA) has determined there are no domestic small business manufacturers, SBA may issue a waiver to the nonmanufacturer rule to permit small businesses to provide any firm's product (see FAR 19.102(f)(7)). Reinstatement of the Buy American statute restrictions has no effect on the application of the nonmanufacturer rule. With respect to the procurement of sperm-whale oil, DoD does not use this product in any application. As such, a discussion of future procurement opportunities for this substance is no longer relevant.

No comments were received from the public in response to the initial regulatory flexibility analysis. This rule does not add any new information collection, reporting, or record keeping requirements. No alternatives were identified that will accomplish the objectives of the rule.

V. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225.

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

225.104 [Removed]

2. Remove section 225.104.

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